Toward Heritage Legislation

A PROPOSAL FOR PUBLIC REVIEW

Province of
British Columbia
Ministry of
Municipal Affairs,
Recreation and Culture, *Hon. Lyall Hanson, Minister*

Province of British Columbia

OFFICE OF THE MINISTER

Ministry of Municipal Affairs, Recreation and Culture

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I am very pleased to release this White Paper entitled, "Toward Heritage Legislation."

The gift of well-preserved heritage resources is one of the most important legacies that we can leave for the next generation of British Columbians.

With the encouragement of the Union of B.C. Municipalities and the excellent public input that we received through the "Project Pride" heritage review, we are now ready to make recommendations for new legislation.

These proposals are comprehensive and we anticipate that they will be pursued through legislation, regulations, policies and programs in the year ahead.

Before advancing our final recommendations, I would like to continue the dialogue that we began with "Project Pride" and receive your views on our proposals, preferably by the end of Heritage Week, February 23, 1990.

Should you have specific questions on the proposals, please contact staff of the Heritage Conservation Branch (356-1434). They will be pleased to answer your questions.

Your constructive comments can help us design legislation that will serve well to the end of this century.

I very much look forward to receiving your comments on a topic that is of great interest to many British Columbians and important to us all.

Yours sincerely,

Lyall Hanson
Minister

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Recreation and Culture

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PART I - INTRODUCTION

THE QUALITY OF BRITISH COLUMBIA'S HERITAGE

Recent Heritage

All cultures seek to preserve elements of their history. The legacy of our culture's events and achievements are important to us all.

British Columbia's heritage is diverse. It ranges from the working ships, the M.V. Delta and the Tahrane that once plied B.C.'s waters, to massive industrial sites like the North Pacific Cannery and the Britannia Beach processing plant. Enterprises such as these are testimony to the efforts and ingenuity of past generations.

There are also many special places in all regions of the province that reflect the richness and diversity of B.C.'s historical development. Point Ellice House in Victoria gives us a picture of how the "well-to-do" lived in the late 19th century. Barkerville provides a vivid, living image of the Cariboo Gold Rush. Our agricultural past is preserved for us at the Keremeos Grist Mill, while Anthony Island gives us a unique glimpse into the lifestyle of a rich native maritime culture. To British Columbians this legacy has no less meaning than the Eiffel Tower might have to the French, or the Empire State Building to the Americans.

"Recent time" heritage, together with the exploration and fur trade periods, are especially important to many residents of the province, for they represent the period when their families first settled in British Columbia.

Ancient Heritage

B.C.'s ancient heritage is deep and diverse, stretching back for thousands of years. The impact of native cultures was gentle on the landscape and the value and richness of this inheritance is now becoming apparent to all. The living legacy of these cultures remains in the eight different linguistic groups and thirty one dialects spoken today by aboriginal people living in British Columbia.

Over 18,000 sites have already been discovered and recorded by archaeologists which contain artifacts dating back over 10,000 years. These sites and artifacts are valued not only for their potential to yield information about the lives of British Columbia's earliest residents, but also for their ability to inspire and support a sense of identity and pride both for the native people and for those of us from other origins.

Natural Heritage

The aspect of our provincial heritage that is perhaps most renowned is our incomparable richness of natural resources.

Besides our varied natural landscapes - from primeval rain forests to towering mountain ranges - this province is blessed with specific natural features and landforms having special cultural meaning or scientific value.

THE CONTRIBUTION OF HERITAGE RESOURCES

Working Heritage

Although some heritage resources are fragile and require special conservation effort, many are in use daily. Most heritage buildings are working buildings; they serve us well as schools, shops, courthouses, legislative assemblies and government offices.

Heritage Tourism

Many heritage resources contribute to our growing tourism industry. In fact, over 60% of B.C.'s major tourist attractions are cultural heritage sites. This is scarcely surprising, as tourism marketing studies conducted over the last five years have emphasized the appeal of heritage to visitors. These studies further show that visitors want even more cultural heritage experiences to enjoy in British Columbia.

Heritage Revitalization

In communities such as Nelson and Greenwood, heritage conservation has also meant civic rejuvenation. In Nanaimo and Ladysmith, conservation activity has transformed the economic viability of city commercial cores.

The attractiveness of Nelson to artisans and film companies and the ability of Chemainus to draw 300,000 visitors a year to view its murals are evidence of the impact of this revitalization.

Yet, there remain many new opportunities for investment in community revitalization around this province, for heritage can become a sustainable resource if we treat it well.

Civic Pride

As business and local government join the dedicated heritage volunteers who have long supported and preserved heritage resources, we are beginning to see heritage used as a means of community development. Heritage awareness can help stimulate civic pride, develop stronger community roots, and educate children about the historical development of their town or city. In our society, heritage awareness creates the sense of security and confidence that is necessary if we are to manage change effectively in our society.

Native Heritage

Heritage is not merely a legacy of relics, but a vital part of living cultures. Traditions, stories, songs and spiritual places of ancestors are, for example, integral features of the daily activities and spiritual life of many band members.

HERITAGE CONSERVATION

Our valuable heritage resources will only remain available in coming years if we reduce the threats to their preservation, and invest in conservation today. We must maintain, restore and rehabilitate our heritage resources for the future.

TOWARD HERITAGE LEGISLATION

Heritage Conservation - Threats

Heritage resources are subject to many hazards, both natural and man-made. Natural forces like sunlight, fire, flooding and erosion, can damage or destroy heritage sites and objects. Vandalism, neglect, economic pressures, and even well intended but poorly executed restoration, can all have similar negative impacts. Lack of knowledge, lack of will, or lack of effort to retain heritage can seriously limit conservation investments. Conversely, over- zealous and over-emotional desires to preserve items of little perceived value or real significance to a community can reduce public confidence, and eliminate possibilities to preserve items of greater value.

Heritage Conservation - Techniques

Although the art and science of heritage conservation is still a relatively new field of endeavour, we are now technically capable of maintaining and extending the life of many heritage fabrics and materials.

The core principle behind most conservation practice is, however, really quite simple. Objects, buildings and sites are best preserved if they can be allowed to age naturally, with the minimum of alteration to the original materials except for those changes that are necessary to enable continued use of the resource. Too much intervention reduces the chances of the conservation effort remaining faithful to the original fabric and character of the object being preserved.

Effective physical conservation follows from the existence of an economic framework that encourages and facilitates responsible heritage investment. In recent years, many new techniques have been developed to create the right type of investment climate for heritage conservation.

Heritage Selectivity

Although good conservation practice can be widely applied to preserve the life of many items and structures - a frugal and sensible approach at any time - only a very small proportion of items qualify for complete retention in their original form. In many cases, it is reasonable to modify the interiors of buildings to upgrade their functionality or to accommodate new uses, in order to retain the heritage character of the exteriors.

In B.C., there are only around 750 buildings that are currently legally protected through designation, although there are many more that have heritage value. Heritage buildings represent quite a small subset of our total building stock. Of the heritage stock, a proportionally small number of structures have been selected on the basis of importance. These fully deserve to receive appropriate stewardship and protection.

TOWARD HERITAGE LEGISLATION

PROVINCIAL GOVERNMENT CONSERVATION

Government Highlights

The provincial government from as early as 1925 has recognized the need to develop special enactments and programs to protect and preserve our heritage. Over the last 15 years this commitment has intensified. The highlights of provincial conservation activities over these years are:

- passage of the Heritage Conservation Act (1977);

- establishment of the B.C. Heritage Trust as an objective arms-length organization that has worked with communities, private organizations, and individuals in more than 1,000 heritage projects;

- restoration of the Legislative Buildings;

- investment in major Heritage Area Revitalization projects in Nelson, Nanaimo, Victoria, Fernie, Greenwood, Prince Rupert, Revelstoke and Ladysmith;

- the successful Imperial Oil Esso Heritage Brick Program which raised more than $300,000 for investments in heritage transportation objects;

- development of the archaeological site impact assessment program;

- designation of the Alexander Mackenzie Heritage Trail and the Hudson's Bay Brigade Trail as our first heritage trails;

- "Royal" designation of the British Columbia Museum, confirming its stature as a world class museum;

- restoration of many Crown-owned heritage sites from Point Ellice House to Barkerville;

- the "Project Pride" public review of heritage policies and programs;

- the launching of the "Community Pride" program to improve community heritage access to training and technical information;

- the new Landmarks Program of the Heritage Trust to facilitate the preservation and presentation of B.C.'s major historical resources.

NEED FOR NEW LEGISLATION

Issues

When the Heritage Conservation Act was passed in 1977, it was considered to be the best heritage legislation in Canada. However, since then the legal, technical and political context of the Act has changed and it has become increasingly apparent that the present legislation does not provide an adequate basis for public conservation programs.

One of the most important functions of the Project Pride Task Force was to review the legislation. It reported:

"The Task Force received incontestable evidence that the Heritage Conservation Act . . . requires significant

changes to make it an effective aid to heritage conservation."

The Task Force identified the major problems with the present Act, and recommended a number of solutions.

Among the issues that the new legislation must address are:

- How can we resolve the confusion that has surrounded the issue of compensation?

- How can we reduce the problem of last-minute heritage conflicts that leave all parties frustrated?

- How can we reduce the loss of native artifacts?

- How can we better include native groups in the stewardship and management of heritage resources?

- How can we create a balance between the community responsibility to protect our common heritage and the rights of individuals?

- How can we better provide for heritage conservation in unincorporated areas of the province?

- How can we provide a sufficient array of tools to communities to deal with the variety of situations they have to address?

- How can the legislation enable the provincial government to be a better manager of the heritage properties that it owns?

- How can the province and communities work more effectively with the private sector to address conservation needs?

- How can we achieve all of this in an economical and fair manner?

Solutions

Since receiving the Project Pride report, ministry staff and consultants have been conducting extensive technical and policy analyses regarding the specific provisions that should be included in heritage legislation. Besides the Project Pride report, and the feedback received about its recommendations, the analysis reviewed the successes and failures various jurisdictions have had with their heritage legislation.

The next section is a detailed description of the recommended legislative policies. It is important that the legislative directives be translated into law that will withstand the ultimate test - that of workability within our administrative, political and judicial systems. However, the most important step in the lawmaking process is deciding what we want the law to be.

This "white paper" introduces a proposal for legislation that would integrate the conservation of our human history into the economic and social development objectives and processes of this province. These policy statements, as modified in response to the feedback received from this public review process, will serve as the instructions for the legislative drafters.

PART II - PROPOSALS

General Legislative Policies

Key principles

1.1 There are four fundamental principles that shape this proposal for new legislation:

i) Heritage conservation law must achieve a fair and effective balance between the rights of the private owner and the objectives of the community.

ii) Community heritage planning must be better integrated into normal local government planning processes, so that last-minute crisis response management is less necessary and less prevalent.

iii) There need to be more incentives and special provisions to encourage and facilitate heritage stewardship.

iv) There must be realistic penalties for those who unlawfully damage or destroy protected heritage resources.

Drafting Framework

2.1 The new heritage legislation should be a comprehensive package of legislative improvements, not "band-aid" solutions to the existing problems.

2.2 A new Heritage Conservation Act (HCA) should be the principal enabling legislation for provincial heritage conservation. It would provide all of the enabling powers for the Ministry of Municipal Affairs, Recreation and Culture's (MARC) conservation activities, except for the Royal British Columbia Museum.

2.3 The heritage powers for local government should be provided through the Municipal Act (MA) and, in the case of Vancouver, through the Vancouver Charter.

2.4 The legislation should integrate heritage conservation into the land-use planning processes at both the local government and provincial levels.

2.5 The legislation should be as simple and clear as possible, but it must also be sufficiently detailed to permit correct legal interpretation in the complex field of property law. The legislation could include some clauses which are not (strictly speaking) legally necessary, but which will assist the public to understand the intent of the heritage provisions.

2.6 Wherever possible, similar procedures should be established under the HCA and the MA, and the same terminology should be used.

2.7 This heritage legislation should take priority over other land-use enactments with regard to conservation and protection of formally recognized heritage sites and objects. Heritage considerations must be balanced with the need for appropriate health, safety and other provisions. This will require consequential amendments to other Acts.

Scope of heritage resources covered

3.1 This legislation should focus on the conservation and protection of heritage

sites that are associated with human history. Natural history heritage sites are mainly conserved under other legislation.

3.2 The legislation should be based upon a broad perspective of "heritage", covering any type of man-made site or object that has scientific, educational, aesthetic or cultural value to the province or a community.

3.3 The only natural features or sites that should be conserved or protected under this legislation are:

- those that are associated with cultural heritage property or human history (e.g., the grounds of an historic house);

- landmarks or natural features having cultural value (e.g., the white rock at White Rock); or

- discrete natural features of scientific value (e.g., geological reference specimens).

3.4 The legislation should enable the conservation and promotion of intangible cultural heritage resources but not provide for their legal protection.

3.5 The legislation should continue to enable legal protection for privately-owned moveable heritage objects by the province, but not by local government.

3.6 The Project Pride Task Force received many submissions regarding the need for legislation regarding the various non-government museums and archives in this province. While this proposal includes a few features related to such facilities (see section, 23), the conservation of collections and operations of heritage institutions is not within the scope of this legislation.

Purposes

4.1 While purpose clauses are not normally included in B.C. legislation under current drafting practices, an explicit statement would be useful in giving direction for appropriate implementation and judicial interpretation of the enabled powers.

4.2 The purpose statement should enable insight into the distinction between valid and invalid uses of the heritage powers. It must be clear to be meaningful, but broad enough to cover the various approaches to conservation and the various types of heritage resources.

4.3 The purposes of the legislation are to enable:

- protection of heritage property;
- conservation of heritage resources;
- heritage investigation and research, and;
- promotion of heritage awareness, understanding and appreciation.

4.4 The purposes of the Act apply to heritage resources that are valued at the community or provincial level.

Provincial conservation planning

5.1 To ensure that heritage conservation requirements are not enacted in isolation from the general objectives of communities and the province, and the

economic and legal environment that properties face, the HCA should provide for the following to be considered when heritage powers are exercised:

- the economic development, social and other objectives of the province and the expressed concerns of other provincial agencies;

- the economic development, social, heritage and other objectives of the community and the expressed concerns of local government;

- the compatibility of conservation with lawful uses of the subject properties and adjoining lands and the expressed concerns of affected property owners;

- the condition and viability of the subject properties, and the costs and benefits of conservation;
and,

- the expressed views of an ethnic or cultural group whose heritage is represented by a subject property.

5.2 MARC should continue to maintain a registry of the recognized heritage sites and objects in the province. It would include all properties listed in official community heritage registries, and any other sites or objects for which legal heritage protection has been enacted. MARC will also maintain its inventory of prehistoric and archaeological sites throughout the province. The provincial registry or inventory could also include objects that have been identified as important to B.C. heritage, but which are no longer in this province (e.g., native ceremonial objects in out-of-province museums).

Heritage Protection and Regulation Issues

Role of local government

6.1 Local governments are to be responsible for establishing their own programs for the protection and conservation of historic sites and heritage buildings. Rarely should provincial heritage protection be used for community conservation issues. Community-based decisions regarding which sites are considered to be heritage property should not require provincial approval.

6.2 Regional districts should have the same conservation role as municipalities, and similar heritage protection powers in unincorporated areas. This parallels their general community planning responsibilities for such areas.

6.3 The heritage powers for Vancouver should be similar to those of other municipalities, but adapted to the planning context of the Vancouver Charter.

6.4 Local government land-use management processes should support provincial programs of heritage resource management (such as the protection of prehistoric sites) through administrative referrals of impact threats to ministry officials. No provincial resource management responsibilities are to be devolved to local government by this legislation.

Application to the Province

7.1 Provincial heritage protection will continue to focus on prehistoric heritage, sites and objects that are owned by the provincial Crown, exceptionally important historic sites, and other unique heritage resources of special value.

7.2 The province and all Crown agencies should be bound by the requirements and heritage protection provisions of the HCA.

7.3 The HCA should provide for cabinet to establish government-wide standards for conservation and stewardship for Crown-owned heritage property. Provincial agencies should be required to consult with local government with regards to management of locally-designated or heritage-zoned properties, and to consider community heritage concerns in resource management decision-making.

Native Indian Heritage Resources

8.1 The province recognizes that it has a special stewardship responsibility with regard to prehistoric heritage sites. All sites containing evidence of pre-colonial (before 1858) habitation or use should be protected under the HCA unless or until a site is determined to have insufficient heritage merit to warrant conservation. Ancient burial sites and rock art sites (petroglyphs and pictographs) should continue to be included within the automatic protection.

8.2 The new legislation should recognize that a prehistoric site may have various kinds of heritage value, not just archaeological significance.

8.3 In accordance with recommendations in international agreements and the practice in other provinces, the HCA should claim Crown ownership of artifacts and other archaeological material that are removed from prehistoric heritage sites. It should provide that no person is the owner of such artifacts by reason of owning the land, or by being their finder. The Crown's ownership claim should not override the ownership claims of descendants or innocent purchasers, nor should it apply to non-archaeological native artifacts. Also in accordance with international conventions, trade in illicitly-obtained artifacts, whether from B.C. or elsewhere, should be prohibited.

8.4 The HCA should require that the management of prehistoric heritage sites and associated artifacts take into consideration both:

- the particular interest and cultural values respecting heritage stewardship of the descendent native peoples; and the province's heritage objectives and its archaeological conservation responsibilities under international agreements.

8.5 MARC will continue to maintain an inventory of all known sites of potential archaeological value. This inventory serves both as a data-base for land-use planning and heritage protection, and as an important resource for scientific research. Its contents are public information.

8.6 The HCA should require any person undertaking archaeological field research in the province to obtain a heritage inspection or heritage investigation permit, and to report the findings of such research to MARC. A permit should not grant its holder access to private land without the owner's permission.

8.7 The province recognizes there is a growing concern among native people that they must participate in the conservation of their heritage resources as a part of their living culture. The HCA should enable the creation of an advisory committee to assist in devising an appropriate framework for conserving Native heritage sites and objects. The specific mandate and composition of this committee should be developed in conjunction with the Ministry of Native Affairs, based upon consultation with native leaders.

Statutory (automatic) heritage protection

9.1 In addition to protection for pre-colonial sites, the HCA should enable cabinet to extend automatic heritage protection to include:

- scientifically-significant paleontological and geological sites;
- commemorative monuments;
- heritage shipwrecks;
- heritage cemeteries and burial places; and,
- other types of heritage resources for which criteria are established by order-in-council.

Such sites would not be legally protected unless/until cabinet establishes criteria for their identification.

9.2 The HCA should include provisions to enable effective and responsive administration of statutory heritage protection. Management tools should include:

- removal of automatic protection from specific sites of insufficient heritage value;
- alteration permits;
- site inspection (monitoring and impact assessment) permits and orders; and,
- site investigation (archaeological excavation and other research) permits and orders.

9.3 The HCA should enable, but not require, notice of statutory heritage protection and/or related orders or permits to be put on the land titles of affected properties.

9.4 The HCA should require that the discoverers of automatically-protected property must report their finds to the appropriate officials in MARC. It should also require the ministry to respond within three working days if site development activity may be delayed by such a discovery.

9.5 The same regulations apply to all owners, and the heritage impact assessment and mitigation policies should be integrated with other provincial regulations regarding development and land- use. Therefore, there would continue to be no right to compensation for owners whose property

value is affected by the presence of automatically-protected heritage resources.

Community-based heritage planning

10.1 Local governments should be encouraged to adopt formal heritage conservation policies, including standards for identification and assessment of heritage properties, in their official community plans. Once established, such policies would be binding on local government and constitute part of the system of procedural protections for heritage property owners.

10.2 Local governments should also be encouraged to undertake systematic heritage inventories, evaluating properties according to the assessment standards established in their official community plans. Heritage properties which meet the standards should be categorized and included in an official community heritage registry which is adopted by resolution of council.

10.3 Inclusion in a heritage registry would inform heritage property owners and prospective purchasers of the heritage value of the property to the community. It would not, in itself, give any legal protection to heritage buildings or sites, except that a council or board should be able to authorize its staff to withhold the routine issuance of a building, demolition or other permit involving a registered heritage property until the next meeting of council. There would be no compensation entitlement for owners whose properties are registered.

10.4 In addition to the proposed heritage legislation, the ministry is studying possible amendments to the Provincial Building Code which would establish compliance alternatives for officially recognized heritage buildings. Buildings on community heritage registries (as well as non-registry buildings that are designated by the province or local government) would be the heritage resources towards which the code amendments would be directed.

10.5 A council or board should be able to order on-site inspection of recognized or potential heritage properties, either to assess the condition and heritage value of the property, or to monitor conformance with the provisions of heritage protection. If an owner or tenant refuses to permit access to the property for such an investigation, the local government should be able to apply for a court order.

Heritage impact assessment

11.1 A municipal council or regional district board should be able to require a development proponent whose proposal might adversely affect a registered heritage property to provide a heritage impact assessment. Specifications for a local government impact assessment would be established by resolution of council, and would be a one-time-only requirement with regards to any particular development project (i.e., no demands for further information could be made unless the original performance specifications are not met by the proponent).

11.2 The process of inventorying, assessing and managing sites under provincial heritage protection should continue to be integrated with the province's general land-use planning and impact assessment system. Developers would continue to hire expert consultants to conduct heritage impact assessments during the pre-approval stages of project planning. If heritage sites are found at that stage, appropriate mitigation measures can be readily incorporated into project planning. This process helps to avoid the unnecessary loss of sites, as well as unexpected discovery of protected sites during the construction phase when delays could be expensive.

11.3 The minister should be able to order a heritage inspection or heritage investigation to be undertaken, if:

- possible heritage property may be subject to alteration by human or natural causes; or,
- possible heritage property may be alienated from Crown ownership; or,
- land may be or may contain heritage property protected under the HCA; or
- possible heritage object may be subject to removal from the province.

11.4 As under the present legislation, the minister should be able to require a development proponent to pay for the heritage impact assessment studies. This would apply only to alienation, development or use of Crown-owned land, and to commercial or industrial land use or development.

Temporary protection

12.1 The legislation should enable the minister or a local government to enact temporary protection for up to two months in order to give time to study long-term conservation options. This temporary protection would be enacted by council or board resolution or by ministerial order.

12.2 The legislation should continue to provide for an additional two months of temporary protection if a heritage designation or heritage zoning bylaw is introduced, or if a provincial heritage designation is initiated. This temporary protection would cease if the heritage zoning or designation order/bylaw is rejected.

12.3 Property should automatically receive temporary protection whenever an impact assessment order is in effect. The MA should also provide for up to one month temporary protection if a local government formally requests Provincial designation of a heritage property for which protection is outside of local jurisdiction (e.g, a heritage object).

12.4 The MA should also enable local government to enact a nine-month heritage control period (one time only per community), to provide general temporary heritage protection while a major heritage planning project is in process. This provision would apply during the preparation of heritage policies for an official community plan and the compilation of an official registry, or during the preparation of a heritage zoning bylaw.

12.5 The processes for permitting alterations to designated and heritage-zoned properties should also apply to properties under temporary heritage protection.

12.6 The legislation should enable, but not require, that the minister or a local government may have a notation concerning temporary heritage protection and impact assessment and mitigation orders be recorded on the land title records of affected properties. As is the case now, compensation would not be payable to properties under temporary heritage protection.

Heritage zoning

13.1 A new heritage zoning power should be created for local government under Part 29 of the MA. Heritage zoning would enable local governments to develop a regulatory environment that is appropriate to the individual problems and opportunities each property presents. It is expected that communities which integrate heritage conservation into their community planning process would find heritage zoning to be a more useful conservation tool than heritage designation (see Section 14, Heritage Designation).

13.2 Unlike heritage designation, heritage zoning would not be applicable to "last-minute" heritage protection situations; prior heritage planning would be required. Only local governments which establish heritage assessment criteria in their official community plans, and which have identified the subject properties in a heritage registry, would be able to enact heritage zonings.

Compensation would not be payable for heritage zoning.

13.3 The process for enacting a heritage zoning should be similar to that for other re-zonings, but should also include mandatory public reports on relevant decision factors, including:

- the condition and economic viability of affected property, and the need for financial or other support to enable appropriate conservation;
- consistency of conservation with other community and provincial objectives and policies; and,
- the costs and benefits of conservation.

13.4 Heritage zoning should combine the features of all local land-use regulations applicable to the subject properties into one integrated package. It would include:
- heritage protection similar to that of heritage designation;
- design control provisions similar to those for downtown revitalization areas;
- land use and density regulations which reflect the existing uses and construction and the adaptation capabilities of each individual heritage site; and
- the flexibility to adapt regulations to specific circumstances, comparable to development variance permits or board of variance powers. Councils and boards should also be able to establish and enforce standards for the maintenance of properties in heritage zones.

13.5 The use and density development entitlement of a heritage-zoned property would be the current envelope and use

of the existing building(s) on the site. To enable adaptive re-use and rehabilitation projects that are compatible with community objectives, a council or board should be able to permit changes in use and/or the construction of additional density for a property in a heritage zone, subject to a public hearing process.

13.6 Councils or boards should be able to give financial and other support for the conservation of heritage-zoned properties (see "Heritage Support Issues", below).

13.7 A heritage zone should be able to comprise or include:

- a single property;
- a heritage trail or corridor;
- heritage districts which include non-heritage properties; or
- non-heritage properties which constitute the environment of a heritage site.

13.8 Heritage zoning should mean that owners will face less, not more, "red tape" when rehabilitating their heritage buildings. No owners would face rehabilitation limitations due to being "non-conforming". Only one application should be required to initiate all of the approvals necessary for a rehabilitation project, and councils should not be able to charge an application fee for rehabilitation approvals which conform to their heritage policies. Defining heritage management plans through comprehensive development agreements would continue to be possible.

13.9 A council or board should be able to establish special procedures for expedited processing of rehabilitation applications for heritage buildings. It should also be able to delegate the authority to authorize alterations to heritage-zone property (other than those affecting use or density). A board of variance should not have jurisdiction to approve alterations in heritage zones, unless that body is assigned the task by the council or board.

13.10 Whenever the authority to permit alterations to heritage-zoned or designated property is delegated, provision should be made for owners to appeal the rejection of an application to the elected officials.

Heritage designation

14.1 In addition to the proposed new heritage zoning tool, the legislation should continue to enable both the province and local governments to protect significant heritage sites through heritage designation. In recognition that we often do not fully appreciate heritage resources until their loss is imminent, heritage designation could be used as an "eleventh-hour" tool to protect newly-recognized threatened heritage property. A heritage designation should continue to be able to override a previously-issued demolition permit, building permit or other development authorization.

14.2 Designation's heritage protection should apply to landscaping features and to interior as well as exterior alteration of buildings, provided that the protected features are specifically identified in the designation bylaw or order. A heritage designation could also be used to protect the environs around a heritage site. The province, but not local government, should be able to designate movable heritage objects.

14.3 Heritage designation of a site should continue to mean that the property cannot be altered without prior approval. The legislation will clarify that the minister and local government may refuse to issue a permit for additional development to a designated property (even if additional density is permitted under the property's applicable zoning) if the additional construction would diminish the heritage value of the site. A local government or the minister may also establish maintenance standards to prevent the "demolition by neglect" of designated heritage sites or objects.

14.4 The province and local government would be required to pay compensation to owners and tenants who are injuriously affected by a heritage designation. The amount of due compensation, if any, would be determined through the procedures established for injurious affection in the MA and Expropriation Act.

14.5 The legislation should require that local government designation follow enactment procedures that are comparable to those for a re-zoning. A post-designation notice should also be sent to owners informing them of the enactment and its legal impact, or that the proposed designation was not enacted. The procedures for provincial designation should not require a public hearing, but should allow such hearings to be held at the discretion of the minister.

14.6 All heritage designations should be recorded as notations, but not as encumbrances, on land titles. The province should also continue to list designated heritage properties in the Provincial Heritage Registry.

14.7 The legislation should provide that minor or inadvertent non-compliance with a procedural provision does not invalidate the heritage protection of a designation bylaw or order.

14.8 The legislation should enable expeditious administration of approvals for alterations through the delegation of permitting authority, the development of management agreements with owners, and the exemption of specified types of alterations from the legislative prohibitions. The legislation should require that whenever the authority to permit alterations is delegated, provision must be made for owners to appeal the rejection of an application to the elected officials.

Heritage trees

15.1 Past experience and the submissions to Project Pride indicate that British Columbians have a special concern for heritage trees. While this legislation is not intended to be used for conserving forests or other natural landscapes, specific natural features such

as heritage trees can constitute cultural landmarks. The prohibitions associated with heritage protection should apply to designated heritage trees, protecting them not only from cutting, but also from other forms of wilful damage (e.g. poisoning).

15.2 The MA provisions for tree-cutting permit areas should be expanded to include the creation of heritage tree areas. The permit requirement for such an area would only apply to trees which meet heritage tree criteria established in an official community plan, or to specific trees identified in an official community heritage registry.

Maintenance requirements

16.1 The province and local government should be empowered to enter into an agreement with an owner to pay for necessary maintenance or stabilization measures, where the costs of preventing deterioration of a heritage property exceed the investment that can reasonably be expected from the property owner.

16.2 Both the province and local government need to be able to prevent heritage properties from being destroyed by undue neglect. Local government should be able, by bylaw, to establish reasonable maintenance standards for protected heritage buildings and sites. If maintenance of a property falls below these standards and the owner fails to comply after being sent a notice informing him of the violation, the municipality or regional district should be able to apply for a court order requiring the owner to bring it up to standard.

16.3 Provincial maintenance requirements should not necessarily be based upon preset uniform standards, because provincial protection applies to so many unique types of sites that are not buildings. Where, in the opinion of the minister, a protected property is being unreasonably neglected the minister should be able to order its owner to bring it up to specified standards. If an owner fails to comply, the minister would apply for a court order.

16.4 If a heritage property is in imminent danger, and the owner either cannot be contacted or fails to respond to a maintenance requirement, the court should be able to authorize the minister or a local government to undertake the necessary measures to prevent loss or deterioration of the site, and to charge the owner for the cost of the work.

Heritage review process

17.1 A Heritage Review Process should be established by the province through the Inspector of Municipalities Office. This would provide property owners with a more expeditious means than the court system to obtain an expert, objective review of the legality and fairness of a heritage enactment. The objective of the process would be to ensure an appropriate balance between the right of the community to conserve and protect its heritage, and the individual rights of property owners.

17.2 Any affected property owner or tenant should be eligible to apply for a heritage review. A review should not be an adversarial proceeding. The reviewer should be able to conduct informal meetings with the interested parties to gather information. He or she would then prepare a report on the findings, which would be presented to the local government together with a proposed resolution. The Heritage Review Process would not have the authority to overturn decisions made by the elected officials. The process should permit and encourage resolution of disputes through the development of a position satisfactory to both the local government and the property owner.

17.3 An owner or tenant could apply for a review of the validity of a heritage zoning, designation, temporary protection or impact assessment order, or for a review of the fairness of the overall environment of regulations and support programs that applies to his or her particular heritage property.

17.4 Decisions regarding what constitutes the community's heritage should continue to rest solely with the elected officials. The Heritage Review Process should not enable a review of the choice made by a local government to select or not select a particular property as heritage - either its inclusion in a community heritage registry or its selection for heritage protection - except where the choice does not conform to the selection standards the established in the official community plan.

Remedies and penalties

18.1 Enforcement of the legislation should continue to be possible through either civil or criminal court processes.

18.2 The minister or a local government should be able to apply to a Supreme Court judge for an injunction if a protected heritage property is considered to be under threat of illegal alteration.

18.3 The maximum penalties for infractions should be specifically identified in the legislation. This would identify an "offence against heritage" as being more serious than other "offenses against property". The maximum penalties should be comparable to those set for other environmental offenses.

18.4 It is recommended that the maximum criminal penalty for an individual should be $50,000 and two years imprisonment. The maximum criminal penalty for a corporation should be $1,000,000 and 2 years imprisonment for the individual(s) responsible. By way of comparison, recently introduced legislation for environmental pollution provides a maximum penalty of $3,000,000.

18.5 Any civil remedies should be ordered by the Supreme Court, not by the Minister or a council as under the present HCA. Potential civil remedies should include other compensatory work when restoration is not possible or appropriate.

Heritage Support Issues

Availability of heritage support

19.1 The legislation should enable various methods for the province and local government to give financial and non-financial support for the conservation of heritage property. Such support is best considered in the context of it being public investment in conservation, in anticipation of public benefits to be realized from that conservation, and not as subsidies to the heritage property owners.

19.2 Officially-recognized heritage status should enable public support to be given to private owners for the conservation of those properties needing assistance to remain viable. Different types and levels of heritage assistance should be available for:

- privately-owned properties that are included in official community heritage registries;
- Provincially or locally designated private heritage property and sites under heritage zoning; and,
- publicly-owned heritage properties.

19.3 In order to respond to varying circumstances, various formats for financial and non-financial assistance must be enabled.

Regulatory flexibility

20.1 Most regulations are written to accommodate normal circumstances. Often, however, heritage properties face uncommon problems and opportunities. Heritage zoning (see Section 13) creates maximum flexibility for local government to adapt its land-use regulations to the unique circumstances of a heritage property. This could include changing the permitted uses and/or allowing additional density in order for a heritage property to be economically viable. However, any such changes must be compatible with both the heritage conservation and the general planning provisions in the official community plan, and should be implemented only after a public hearing.

21.2 Because of the number of different kinds of permits needed for rehabilitation, conservation now often involves more "red tape" and bureaucratic delays than site redevelopment. Local government should be able to establish policies for the expeditious processing of rehabilitation-related applications which conform to its conservation objectives and policies.

21.3 In addition to changing the heritage legislation, possible amendments to the Provincial Fire Code and Building Code are now being studied. The present codes are suitable mainly for new construction, and compliance with the sometimes-unnecessary and inappropriate provisions can make heritage rehabilitation uneconomic or impossible. The amendments would identify compliance alternatives for rehabilitation and/or restoration of heritage buildings.

21.4 The amendments to the code could be applied to any building on an official heritage registry, not just those that are legally protected through designation.

Special provisions would be made for buildings that are no longer in their original use, but are presented as historic site museums or in "heritage villages".

21.5 Amendments should also be made to various other provincial statutes ensuring that officials may adapt the application of provincial regulations to accommodate heritage considerations whenever it is appropriate. As with the supplements to the fire and building codes, health and safety standards should not be compromised, but officially recognized heritage properties should be eligible for equivalencies or compliance alternatives.

Financial support

22.1 Local governments should not be able to charge application fees for the approvals needed to rehabilitate heritage-zoned or designated buildings, provided that the application conforms to their heritage policies. This would help to offset the additional planning and design costs owners face in preparing a heritage-sensitive rehabilitation project. This is the only financial benefit that should automatically apply to protected heritage properties; all other assistance should be discretionary, given only to conservation projects that need financial support in order to be feasible.

22.2 The minister and local governments should be given broad authority to provide financial assistance toward conservation costs. Only properties that are under some form of heritage protection should be eligible for public financial assistance.

22.3 Changes should be made to the MA to give local governments greater flexibility to support conservation through relief of property taxes so that partial or full exemption or deferral of property taxes could be granted for a period of up to seven years. Councils and boards should be able to grant relief from all property taxes, not just the municipal or regional district portions. It is recognized that the mill rates of other property owners would need to be raised to enable this assistance for selected heritage properties. Only designated or heritage-zoned properties should be eligible for such tax relief.

22.4 Local governments should continue to be able to establish community heritage commissions or foundations, to implement support programs under council or board policy direction.

22.5 The B.C. Heritage Trust should continue to be the province's vehicle for financial assistance for conserving heritage properties that are not owned by the Crown. In addition to the trust's existing granting powers, it should be able, with appropriate cabinet and Ministerial approval, to provide support through loans and equity participation, and to enter into other business partnership arrangements.

Heritage facilities and institutions

23.1 Local government should have all of the necessary authority to acquire and conserve heritage property, and to develop and operate historic sites,

museums and archives. This must include adequate authority for visitor management and site security.

23.2 The HCA should continue to enable both the B.C. Heritage Trust and MARC to acquire and conserve heritage property, to develop and operate historic sites, to erect historic site markers and commemorative plaques, and to engage in other programs to promote public awareness, understanding and appreciation of provincial and community heritage.

23.3 The HCA should enable the cabinet to establish conservation and management standards for historic sites operated by the various ministries and agencies of the Crown. MARC would monitor, co-ordinate and provide technical support for the conservation and development of the provincial historic attractions.

23.4 The HCA should provide for selected historic sites operated by the Crown to be identified in legislation, similar to the practice of scheduling for provincial parks. This would confirm the commitment of the province to implement the highest standards of stewardship for such sites. Such historic sites could only be de-scheduled by the legislature.

23.5 Special provisions for historic site museums and heritage villages are being reviewed for inclusion in Building Code and other provincial regulations. These would enable historic buildings to be authentically presented (e.g., an historic house that is not being lived in would not have the "house" standards applied to it).

23.6 The HCA should enable the province to enter into arrangements for conservation and management of Crown-owned historic properties (subject to provincial conservation standards) by local government, Indian bands and community-based heritage organizations. The province should also be empowered to develop other means by which local communities can get more involved in the stewardship of Crown-owned heritage properties.

23.7 Some heritage sites or other property have been donated or bequeathed to local government or other public agencies subject to formal directions, trusts or other terms which are no longer appropriate. The legislation should enable the province, local governments and heritage agencies to apply to the Supreme Court for such variations as will, having the intent of the donor in mind, be in the public interest. The purpose would be to modify the specific terms of such a bequest or donation, while continuing to abide by its spirit and objectives.

23.8 It was formerly the practice of some museums and other heritage agencies to acquire objects under conditional agreements, through indefinite-term loans, or under other arrangements which did not transfer ownership to the institution. Sometimes the terms of acquisition are no longer appropriate, or the object no longer fits within the institution's collections policies. Where the ownership of an object held by a museum, archives, art

gallery or other heritage institution is impaired or unclear, and the owner of the object either cannot be identified or found, the minister should be empowered to declare the object to have been abandoned and be able to assign ownership to the appropriate institution.

23.9 Applicable provisions of the HCA may apply to the Royal British Columbia Museum, the B.C. Archives and records service and to provincial parks, but this legislation is not intended to override the conservation mandates of these provincial heritage institutions under their individual enabling legislations.

Heritage recognition

24.1 Heritage designation has traditionally been viewed as a conferring of heritage status, as well as an enactment of land-use regulation. This dual designation role has sometimes led to confusion. The new legislation should enable the minister and local governments to recognize the heritage value of buildings, sites, or objects by proclamation, separate from the enactment of heritage protection. The province and local governments should be able to erect plaques or commemorative markers on proclaimed sites, with the permission of their owners.

24.2 Sites and objects proclaimed to be part of B.C. heritage need not be in this Province. The plaquing of an out-of-province site (e.g., Capt. George Vancouver's grave or birthplace) may be an appropriate way to promote awareness and understanding of B.C.'s history, or to commemorate a person or event important to B.C. history.

Other Legislative Provisions

B.C. Heritage Trust

25.1 The HCA should maintain the B.C. Heritage Trust as a Crown corporation. Few changes are needed from the trust's current enabling powers to permit it to continue in its role as the province's principal vehicle for supporting heritage conservation.

25.2 The HCA should provide for the establishment of ministerial guidelines, rather than continuing to require ministerial approval for many of the Heritage Trust's routine decisions and actions. Appointments to the Heritage Trust board should be made by the minister.

25.3 The Heritage Trust should be able to support conservation projects through grants, loans or equity investment, and engage in commercial or business undertakings related to heritage conservation.

25.4 The Heritage Trust should not be able to borrow money except as approved by the cabinet and under regulations in the Financial Administration Act. Trust participation in business enterprise should require the prior approval of the minister.

25.5 The Heritage Trust should be able to charge fees for admission or use of its facilities or for any service that it provides.

25.6 Accounting and reporting requirements and personnel policies should reflect present government draughting policy regarding quasi-autonomous Crown corporations. An annual report of Heritage Trust activities and finances should continue to be made to the legislature by the minister, however, 120 days should be allowed to meet this requirement.

Heritage covenants

26.1 The legislation should continue to enable the conservation and protection of properties through heritage covenants and easements which are voluntarily agreed to by property owners. Heritage covenants are more flexible than local governments' covenants under Section 215 of the Land Title Act with regard to what kinds of matters can be covered, and are much more flexible than regular common law covenant and easement arrangements. Non-government heritage organizations should be included as possible beneficiaries of such contractual arrangements.

26.2 Heritage covenants should continue to be able to be assigned over to another party for monitoring and enforcement, but only to organizations that are eligible to enter into such agreements in their own right (not to "any person" as under the current HCA).

Registration on land titles

27.1 Notice of all heritage designations, listings on community heritage registries, and heritage zonings should be filed with the Land Title Office. The Registrar of Land Titles would then make a note of the filing on the affected property's title. "Notations" are not encumbrances against the title, but this would ensure that potential purchasers are informed of the heritage status of the property.

27.2 The minister and local governments should be able, at their discretion, also to file notices with regard to temporary heritage protection, impact assessment or mitigation orders, tax relief measures and other formally-enacted heritage requirements, restrictions or entitlements which "run with the land".

27.3 The protection of heritage property should not be affected by an inadvertent omission or incorrect information in the notification to the Land Title Office or in the notice on the title registry.

Expropriation

28.1 The legislation should enable local government and provincial expropriation of properties for conservation purposes (as distinct from the already-permitted redevelopment and public-use purposes) subject to the usual procedural and compensation provisions of the MA and the Expropriation Act.

Advisory and other bodies

29.1 The legislation should enable broad authority for the minister and local governments to establish heritage committees, foundations or commissions to assist them in achieving their conservation objectives. No specific bodies (other than the B.C. Heritage Trust) would be created by the legislation.

Transition issues

30.1 The enactment of new legislation provides an opportunity for the province and local governments to review and update all of their current heritage policies and programs. The heritage designations that were enacted under the existing and previous heritage legislation should remain in effect and enforceable as designations under the new legislation for a period of five years. If the province or local government wants its heritage protection of a property to continue after that time, it would need to re-enact protection by way of heritage zoning, a heritage designation or an easement or covenant under the new legislation.

30.2 The terms and conditions of alteration permits issued under the present Act or predecessor legislation (e.g., the assignment of repositories for archaeological artifacts) should remain in effect under the new legislation.

30.3 It was recently discovered that a long-forgotten statute - the Indian Graves Ordinance, 1867 - was invalidly repealed in 1888. This old statute, along with the current enactments that are supplanted by this new legislation, should be repealed.